

**HEALTH RESOURCES AND SERVICES ADMINISTRATION
HIV/AIDS BUREAU
DIVISION OF SERVICE SYSTEMS**

TITLE I CONFERENCE CALL SERIES

GRIEVANCE PROCEDURES

November 13, 2001 4:00 P.M. EST Conference Call

WELCOME / ANNOUNCEMENTS

Harold Phillips, Eastern Services Branch Chief and conference call Moderator opened by welcoming all participants to the November 13, 2001 Title I Conference Call focusing on Grievance Procedures. Following the welcome, Mr. Phillips introduced the following conference call presenters:

- Doug Morgan, Director, Division of Services Systems (DSS)
- Gary Cook, Western Services Branch Chief;
- Shirley Tyree, Norfolk, VA Ryan White Title I Project Director; and
- Veronica Jacobs, Houston, TX Ryan White Planning Committee Secretary

DSS ANNOUNCEMENTS

Doug Morgan, DSS Director, made the following announcements:

- DSS is thankful to all EMAs that have completed and returned their FY2002 Application on schedule.

DSS is currently reviewing applications and hopes to complete the process by the end of November.

- Due to the events of September 11, Congress has not completed its deliberations with respect the FY2002 budget. The Division will notify all grantees and constituents once Congress approves the final budget.
- Several weeks ago DSS convened a special session, with grantee participation, to address methods for simplifying the Application Guidance, consolidating funding years, and the possibility of switching to a biennial application process. DSS is currently reviewing a report of this special session. The Division expects to complete and distribute the report by mid December.

- The most recent CARE Act Cross Title Data Report Training held in Baltimore, Maryland in early November was hugely successful. The Division is currently planning two additional trainings sessions. One session will be held in Nashville, TN; the location of the other sessions has not been determined thus far. DSS will disseminate further information regarding these training sessions as the details become available.

DSS is also considering a fourth training that will likely be held in the Washington, D.C. area after January 1, 2002. Representatives from EMAs who are unable to attend any of the first three training sessions, will be invited to the fourth meeting (provided this meeting takes place).

PRESENTATIONS

Gary Cook, Western Services Branch Chief

Topics:

1. Grievance Procedures: Basic Requirements
2. HRSA's Requirements

GRIEVANCE PROCEDURE DEFINITION

"A fair and systematic process that enables individuals or agencies to express dissatisfaction to an appropriate, responsible and responsive group; the ability to obtain a fair and impartial assessment of the dissatisfaction; and the right to obtain a decision regarding the resolution of the expressed dissatisfaction"

TYPES OF GRIEVANCES

Within the configuration of an EMA, there exists the possibility for numerous dissatisfactions/grievances, which may necessitate a formal grievance procedure. Several potential examples could include:

- Consumers may express their dissatisfaction with providers regarding service areas or the lack thereof;
- Planning council members may express dissatisfaction with the planning council, with regards to specific decisions; or
- A provider may express dissatisfaction with the grantee over the request for proposal (RFP) process and/or funding outcomes.

If such grievances occur (or any number of others), the Division expects EMAs to have locally defined procedures in place to address these situations. While arranging grievance procedures, it is imperative that the CARE Act Grievance Guidelines are followed. These procedures include, but are not limited to, the following:

- Documentation - Specific documentation of methods utilized to address complaints regarding deviations from established contracting and award processes. This includes complaints concerning deviations from established procurement procedures or any changes to the selection of providers.
- Time Requirements - Documentation of formal grievance procedures should detail specific time requirements/limitations regarding the process.
- Rules of Governance - Documentation should clearly categorize specific types of grievances (e.g. those that eventuate in binding versus non-binding arbitration) and detail the procedural requirements for each.
- Grievance Process Costs - Documentation should highlight any costs, borne by all involved parties, incurred by making use of the grievance process.
- Funding Decisions - Documentation should detail how funding decisions/priorities will be managed during the grievance process.

In summary, effective grievance procedures are recognized and understood by the public, applied consistently, and are impartial when rendering judgments. In addition, effective grievance procedures are constructed and implemented with the express purpose of achieving the correct outcome (provided there is one) and the best method of reaching that outcome. Grievance procedures should never be utilized to assign blame or decide who is wrong.

Shirley Tyree, Norfolk, VA,
Ryan White CARE Act (Title I) Project Director

Topics:

1. History & Uniqueness of the Norfolk, VA EMA
2. "Pitfalls" Encountered in the Grievance Process
3. Corrective Actions Currently Underway at Norfolk

NORFOLK, VA EMA DEMOGRAPHICS

- Received first Planning Grant in 1998 (one of the last two Eligible Metropolitan Areas)
- Service region includes the Greater Hampton Roads area – a major military and industrial port and home to the world's largest navel base; Karrituk County, North Carolina – a coastal county that borders Greater Hampton Roads

EMA STRUCTURE

In most EMAs, the CEO delegates EMA grants administration duties to a local government agency (typically the local health department), which reports directly to the CEO. In establishing the daily governing body for the Norfolk EMA, the CEO initially decided upon the Norfolk Department of Public Health. However, the Norfolk government structure does

not provide a direct line of accountability from the local government administration to the health department. Subsequently, the CEO decided to develop a small grantee staff, within the Executive Department, to provide daily oversight and management for the Title I CARE Act.

During fiscal year 1999, the EMA's first year for delivering services, Greater Hampton Roads HIV Health Services Planning Council was the only entity, within the EMA, to draft a formal grievance procedure. Neither the grantee nor its providers were required to have grievance processes in place. Fortunately, there were no significant grievances raised during this time.

In fiscal year 2000, the administrative agent devised a formal grievance process, which fulfilled the legislative requirements--permitting grievants to file a formal complaint concerning the conduct of procurement and the content of the RFP. Still, the document did not consider any of the other forms of grievances or remedial methodologies.

The administrative agent also devised a poorly written grievance procedure, detailing the steps a prospective grievant should follow to file a grievance related to procurement procedures or the content of the RFP. However, other types of grievances were not considered.

In this document, the city of Norfolk gave itself the responsibility for receiving grievances and for selecting/convening a committee to review all claims. The document stated that the committee would provide a written response to all grievances within five days of receiving the grievance and upon review of the City Attorney and City Manager. However, this did little to ensure prospective grievants that an impartial process would transpire and eventuate in a fair outcome. Moreover, the document failed to anticipate and make concessions for dissimilar types of grievance processes (e.g. binding and non-binding arbitration).

THE CHALLENGE

A provider challenged Norfolk's grievance process in fiscal year 2000 after being refused reimbursement, by the grantee's fiscal agent, for expending Ryan White funds for unallowable expenses. The provider was dissatisfied with the decision and sought recourse by submitting a written appeal for reimbursement to the grantee. Nevertheless, the grantee upheld the decision of the fiscal agent.

Still dissatisfied and armed with the knowledge that the grantee did not have an adequate grievance process, the provider appealed to the City Manager. Eventually, the City Manager determined that the situation had the potential to deteriorate and agreed to reimburse the costs to the provider.

LESSONS LEARNED

Since the incident, the grantee has drafted its own grievance procedures, which encompass all grievance categories and procedures for each. The agreement will be subjected to a thorough evaluation by all authoritative bodies including the offices of the City Attorney, City Purchasing, and the City Manager. In addition, all participating providers will be required to develop and submit separate grievance procedures for the fiscal year 2002 application.

Veronica Jacobs, Houston, TX Ryan White CARE Act
Planning Council Secretary & Operations Committee Member

PURPOSE OF THE PLANNING COUNCIL GRIEVANCE PROCEDURE:

To provide a conflict resolution mechanism for filing, evaluating and resolving complaints regarding funding decisions made by the planning council.

GRIEVANCE PROCEDURE GOAL:

To resolve grievances at the lowest possible level and, in the event that this cannot be accomplished, to have a clear plan in place that outlines steps the grievants may take to achieve resolution.

INTEGRITY

- Parties, involved in the grievance procedure, should not discuss relevant matters with parties outside the grievance process.
- Ensure that no conflicts-of-interest exist among committee members on either side of the grievance.

PUBLISHED PROCEDURE

- The grievance procedure should be published in the official Policies and Procedural Handbook for all to see. The document should highlight the authority and mandates provided in the CARE Act. Terms provided in the text (e.g. arbitration, mediation, official business dates, etc.) should be defined.

TIMELINES & DEADLINES

- Deadlines should be outlined and maintained throughout the process.
- The grievant should be instructed to file formal, written notification of grievance on a formal intake form (designed by the EMA) within five business days of the incident to be grieved.
- Planning Council Coordinator should be notified immediately. In addition, a formal record should be initiated.
- The Grievance Committee Chairperson should be notified within three business days of the grievance.
- Planning Council Coordinator should send the grievant acknowledgement of receipt, via certified mail, within three business days.

GRIEVANCE HEARING

- A grievance hearing should be held within 14 business days after receipt of grievance notification.

- The committee determines if the grievance is within the scope of issues and if the grievant is eligible to initiate the process.
- The grievant(s) should be notified (via certified mail) of the date, time, and place for the hearing within five business days.
- Prior to the hearing, the grievant may amend the grievance.
- All decisions should be made no later than 10 days after the date of mediation and all parties should be notified of the decision, by certified mail, within three days of the decision.
- If any party of the grievance is not satisfied, that party may request mediation. Mediation requests must be made no later than three business days after receiving the committee's decision.

MEDIATION

- Mediation must be provided by an impartial third-party service that is mutually agreed upon by all parties.
- The mediating organization should select the location of mediation.
- Mediation costs (if applicable) should be shared by all parties.
- Initial mediation should be scheduled within 14 days after Planning Coordinator receives the request.
- All business conducted during mediation should be considered confidential; however all documents should be subject to the Public Information Act.
- The maximum amount of time to complete any nonbinding process should be outlined in the grievance procedure (e.g. eight hours).
- Any controversies, claims or disputes that cannot be successfully resolved through the grievance process or via good-faith negotiation shall be settled by arbitration.

ARBITRATION

- The grievant must notify the Planning Council Coordinator of his/her intention to pursue arbitration within three days of receiving the results of the mediation process.
- A panel of three qualified, neutral arbitrators should conduct arbitration.
- Results of arbitration shall be binding.
- Prior to arbitration, an independent third-party organization (selected in advance) should provide each side with a list of proposed arbitrators. Each side will have ten business days to strike the names of those individuals that are unacceptable. The designated third-party will contact the selected arbitrators in order of priority.
- The arbitration panel should hear the dispute within 30 days after the appointment of the panel.
- Fees associated with the arbitration process (including arbitration fees, travel costs, copy charges, telephone expenses, court costs, etc.) are borne by the parties equally. However, each party is responsible for expenses related to its own case (e.g. council, expert witnesses, and preparation).

The process is very detailed and specific, however the major emphasis of the grievance procedure is limited to funding decisions made by the council. This process was neither intended to settle disagreements between council members or grievances regarding service

providers.

QUESTIONS & ANSWER SESSION

Topic: Grievance Process

Question: Is it possible to send a copy of the Houston, TX Planning Council Grievance Process with the transcripts for the call?

Harold Phillips/Veronica Jacobs: Yes. It will be forwarded along with the summary of this call.

QUESTIONS RECEIVED IN ADVANCE OF THE CALL (As addressed by Harold Phillips)

Topic: Grievance Issues

Question: What type of issues should be included in the grievance process?

Response: The CARE Act focuses on the process the planning council utilizes and on procurement practices. Issues that focus on service provisions should be detailed in the provider's grievance process.

Topic: Number of Days in the CARE Act Model

Question: How many days does the CARE Act recommend for the grievance process?

Response: The Act outlines a number of days the Division believes appropriate, for non-binding issues as well as those that require arbitration. For example, to determine whether a complaint falls within those issues that are grievable (five days); for notification of the all parties (one or two days); for selection of a third party (five to ten) days; and 10 to 15 days to conduct a hearing. Again, these are the general parameters.

Topic: Provider Grievance Procedures

Question: Should the EMA require its providers to have one standard grievance procedure?

Response: The Division expects providers to have some provisions in place that allow consumers to address their concerns regarding service provisions. However, individual circumstances should dictate whether standard procedures should

exist. In other words, this depends upon the grantee and the provider(s).

Topic: Assisting Grievant(s) with the Process

Question: Can the planning council appoint an individual to assist the grievant with the process?

Response: There is no specific guidance on this matter; it really comes down to a local decision. However, the grantee should ensure that confidentiality is maintained if advocates are used.

CONCLUSION

With no further questions, Harold Phillips concluded the call by thanking all the presenters, as well as the conference call participants.